

Message Text

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ACTION L-03

INFO OCT-01 ARA-06 EUR-12 EA-07 IO-13 ISO-00 SSO-00 NSCE-00

USIE-00 INRE-00 AF-08 NEA-10 AID-05 CEQ-01 CIAE-00

COME-00 DODE-00 EB-07 EPA-01 INR-07 NSF-01 NSC-05

NSAE-00 PM-04 OES-06 SS-15 SP-02 FEAЕ-00 INT-05 H-02

PA-01 PRS-01 /123 W

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O R 091149Z AUG 76

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 1776

INFO AMEMBASSY BONN

AMEMBASSY BUENOS AIRES

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY MEXICO CITY

AMEMBASSY OTTAWA

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C O N F I D E N T I A L GENEVA 6407

E.O. 11652: GDS

TAGS: PARM, CCD

SUBJ: CCD - ENMOD NEGOTIATIONS: ARTICLE I

1. SUMMARY: THIS MESSAGE DISCUSSES CURRENT STATUS OF
NEGOTIATIONS ON ARTICLE I OF DRAFT ENMOD CONVENTION AND
RECOMMENDS REFORMULATION OF THRESHOLD WITHOUT CHANGING
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CRITERIA FOR APPLICABILITY OF PROHIBITION. END SUMMARY

2. US WILLINGNESS TO PLACE INTERPRETATIONS OF THE THRESHOLD CRITERIA IN AN ANNEX, AND ESPECIALLY OUR SUBSEQUENT INTRODUCTION OF THE PROPORTIONALITY ELEMENT INTO THE INTERPRETATION OF "SEVERE," HAVE MADE SIGNIFICANT INROADS IN THE GROUP OF COUNTRIES CRITICAL OF THE ABSENCE OF A COMPREHENSIVE BAN (E.G., YUGOSLAVIA, NETHERLANDS, ROMANIA). HOWEVER, ARGENTINA AND MEXICO CONTINUE TO OPPOSE THE PRESENT FORMULATION USING THE WORDS "WIDESPREAD, LONG-LASTING OR SEVERE" IN THE TEXT OF THE ARTICLE AND RELATING THE INTERPRETATIONS IN THE ANNEX DIRECTLY TO THOSE WORDS. CANADA HAS JOINED THIS OPPOSITION FOR A RELATED REASON.

3. ARGENTINA AND MEXICO ARGUE THAT IT IS INAPPROPRIATE, IN TWO DISTINCT INTERNATIONAL INSTRUMENTS, TO STATE THE CRITERIA FOR APPLICABILITY OF THE PROHIBITION IN VIRTUALLY IDENTICAL TERMS, AND THEN TO SET OUT VERY DIFFERENT INTERPRETATIONS OF THOSE TERMS. US DELOFFS ASKED ARGENTINE REP BERASATEGUI WHETHER INTRODUCING INTERPRETATIONS IN ANNEX TO ARTICLE I WITH WORDS "FOR THE PURPOSES OF THIS (ENMOD) CONVENTION" WOULD NOT MAKE IT SUFFICIENTLY CLEAR THAT THE INTERPRETATIONS WERE ONLY VALID FOR THE PRESENT INSTRUMENT. BERASATEGUI RELAYED QUESTION TO BUENOS AIRES (HE SAID) AND REPORTED THAT ARGENTINE AUTHORITIES STILL BELIEVE DIFFERING USE OF "SIDESPREAD, ETC." IN ENMOD CONVENTION AND IN LAWS OF WAR PROTOCOLS WOULD INEVITABLY RAISE HAZARD OF CONFLICTING INTERPRETATIONS, WHICH MIGHT ULTIMATELY AFFECT THOSE OF PROTOCOLS ON BASIS THAT ANOTHER TREATY (ENMOD) HAD SET A PRECEDENT. HE ARGUED THAT INTERPRETATIONS OF WORDS "SIDESPREAD", "LONG-TERM" AND "SEVERE" IN LAWS OF WAR CONTEXT EXIST ONLY IN COMMITTEE REPORT AS COMMITTEE'S "UNDERSTANDING" (DEL RECALLS THAT US ABATED ON COMMITTEE REPORT); THAT WORDS ARE THUS QUITE VULNERABLE TO REINTERPRETATION IN A MORE RESTRICTIVE DIRECTION WHEN FULL DIPLOMATIC CONFERENCE TAKES UP MATTER; AND THAT US(AS WELL AS OTHERS) SHOULD THEREFORE FIND IT IN ITS INTEREST TO REMOVE THE THREE TROUBLESOME WORDS IN ENMOD CONVENTION.

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4. CANADIAN ACTING REP (SIMARD) DISCUSSED THIS POINT WITH US AUG 6. CITING INSTRUCTIONS FROM OTTAWA, SIMARD INDICATED THAT CANADIANS WANT PRIMARILY TO PRESERVE LAWS OF WAR INTERPRETATIONS SETTING MUCH HIGHER CRITERIA FOR APPLICABILITY THAN THOSE IN ENMOD DRAFT. OTTAWA THEREFORE COULD NOT ACCEPT SETTING OUT INTERPRETATIONS OF "WIDESPREAD, LONG-LASTING OR SEVERE" IN ARTICLE I ANNEX.

5. COMMENT: DEL BELIEVES WE HAVE REDUCED OPPOSITION TO PRESENT FORMULATION OF ARTICLE I AND ANNEX TO REALISTIC MINIMUM. WE ALSO BELIEVE THAT ACCOUNT SHOULD BE TAKEN OF POSSIBLE EFFECTS IN EVENT ARGENTINA, MEXICO AND PERHAPS CANADA HOLD OUT AND PUBLICLY STATE THEIR REASONS FOR NON-ACCEPTANCE. WE ARE AWARE OF THE PROBLEMS INVOLVED IN PURSUING THE COURSE SUGGESTED BELOW, BUT BELIEVE THAT IT COULD BE PIVOTAL IN GAINING OUR BASIC OBJECTIVE OF A WIDELY-AGREED TREATY WHICH MEETS ALL US INTERESTS, ESPECIALLY AS IT WOULD PRESERVE THE THRESHOLD AT THE LEVEL WE WANT. (BERASATEGUI HAS INDICATED ARGENTINA COULD IN THE END GO ALONG WITH THRESHOLD TREATY IF WORDS "WIDESPREAD, ETC." WERE ELIMINATED; (HE HINTED THAT A FORMULATION ALONG THE LINES INDICATED BELOW MIGHT BE ACCEPTABLE). MEXICAN REP (CAMPOS-ICARDO) TOLD US BEFORE ABOVE CONVERSATION THAT HE IS INSTRUCTED TO SUPPORT ARGENTINA. CANADA OF COURSE ACCEPTS THRESHOLD APPROACH AS SUCH).

6. RECOMMENDATIONS: DEL THEREFORE RECOMMENDS THAT WASHINGTON URGENTLY CONSIDER REPLACING "WIDESPREAD, LONG-LASTING OR SEVERE" IN ARTICLE I WITH THE FOLLOWING NOUNS: "EXTENT," "DURATION" AND "SEVERITY". ARTICLE I (1) WOULD THEN READ AS FOLLOWS:

"1. EACH STATE PARTY TO THIS CONVENTION UNDERTAKES NOT TO ENGAGE IN MILITARY OR ANY OTHER HOSTILE USE OF ENVIRONMENTAL MODIFICATION TECHNIQUES HAVING EFFECTS OF THE EXTENT, DURATION OR SEVERITY AS SET OUT IN ANNEX -----, AS THE MEANS OF DESTRUCTION, DAMAGE OR INJURY TO ANOTHER STATE PARTY."

7. THE PARAMETERS FOR APPLICABILITY WOULD REMAIN UNCHANGED.
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THEY MIGHT BE SET OUT IN THE ANNEX WITH INTRODUCTORY LANGUAGE ALONG THE FOLLOWING LINES:

"THE UNDERTAKING IN ARTICLE I OF THIS CONVENTION RELATES TO MILITARY OR ANY OTHER HOSTILE USE OF ENVIRONMENTAL MODIFICATION TECHNIQUES HAVING EFFECTS MEETING ONE OR MORE OF THE FOLLOWING CRITERIA:
(A) EXTENDING OVER AN AREA ON THE SCALE OF AT LEAST SEVERAL HUNDRED SQUARE KILOMETERS;
(B) HAVING A DURATION OF AT LEAST SEVERAL MONTHS, OR APPROXIMATELY A SEASON;
(C) VERY DISRUPTIVE OR HARMFUL, TAKING INTO ACCOUNT THE PROPORTION OF A STATE PARTY'S TOTAL AREA, POPULATION, NATURAL AND ECONOMIC RESOURCES AND OTHER ASSETS AFFECTED."

8. WOULD APPRECIATE WASHINGTON RESPONSE SOONEST.CATTO

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, NEGOTIATIONS, MEETING REPORTS
Control Number: n/a
Copy: SINGLE
Draft Date: 09 AUG 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976GENEVA06407
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760305-1063
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760872/aaaacfv.tel
Line Count: 170
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 08 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <08 APR 2004 by CunninFX>; APPROVED <03 AUG 2004 by BoyleJA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CCD - ENMOD NEGOTIATIONS: ARTICLE I
TAGS: PARM, CCD
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006